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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,073	10/23/2003	Carl Whitcomb	WHIT/0022	2078
24945	7590	02/13/2004	EXAMINER	
STREETS & STEELE 13831 NORTHWEST FREEWAY SUITE 355 HOUSTON, TX 77040			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/693,073	Applicant(s) WHITCOMB, CARL	
	Examiner Kent L. Bell	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

application filed 10/23/03

- 1) Responsive to ~~communication(s) filed on~~ _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10/23/03 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

K. L. Bell

Detailed Action

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

- A. Page 3, lines 13, 15, 16, 17, and 19, Applicant should delete "FIG." and insert - -Figure- - to correspond with the recitation set forth on the photographic drawings.
- B. Page 4, lines 1-6, Applicant should set forth in the specification the age of the plant when described and container size, if grown in a container.
- C. Applicant is requested to set forth in the specification the name of the parental cultivar, if named. If unnamed, applicant should simply state "an unnamed hibiscus plant". Further, applicant is requested to set forth in the specification the patent status of the parental cultivar. If

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patented, applicant should set forth the United States Plant Patent number after the cultivar name.

If not patented, applicant should simply state “(unpatented)” after the cultivar name.

D. Page 4, line 10, Applicant states the instant plant’s origin is “Seedling”. Previously applicant states the instant plant was obtained from an open pollination, page 1 of specification. The plant’s origin appears to be “an open pollination of an unnamed female hibiscus plant (or set forth name, if known) and an unknown male hibiscus plant.”. If such is accurate, it is suggested that applicant set forth this recitation in the specification to clearly and unambiguously set forth the instant plant’s origin.

E. Page 5, line 9, Applicant states “one 1”. It appears applicant meant to state either “one” or “1”. Correction and/or clarification is necessary.

F. Page 5, lines 14 and 15, Applicant should set forth in the specification additional information relative to the instant plant’s stems including the typical and observed internode length.

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G. Page 5, lines 28 and 29, Applicant should set forth in the specification additional information relative to the instant plant's flowers including the typical and observed flower depth and fragrance.

H. Applicant should set forth in the specification the lastingness of the bloom, on the plant.

I. Page 6, lines 5-7, Applicant sets forth in the specification petal colorations but does not state whether the colorations are for the upper, lower, or both petal surfaces. Applicant should set forth in the specification colorations with reference to the employed color chart for the upper and lower petal surfaces.

J. Page 6, line 8, Applicant should set forth in the specification additional information relative to the instant plant's petals including the typical and observed petal apex, base, and margin descriptors.

K. Applicant should set forth in the specification the typical and observed pistil number.

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L. Page 6, lines 19 and 20, Applicant should set forth in the specification additional information relative to the instant plant's sepals including the typical and observed sepal shape, length, width, apex and margin descriptor, and coloration (both surfaces) with reference to the employed color chart.

M. Page 6, line 20, Applicant should set forth in the specification additional information relative to the instant plant's bracts including the typical and observed bract shape, length, width, apex, base, and margin descriptor, and coloration (both surfaces) with reference to the employed color chart.

The above listing may not be complete. Applicant should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

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Claim Rejection

35 U.S.C. 112, 1st & 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

Comments

Applicant should note the new amendment format which is now mandatory (Web site stated below).

<http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/revamdtprac.htm>

Applicant should send all correspondence to the following address:

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell